

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	

		Agency No.		Rule No.		Section No.
Utah Admin. Code Ref (R no.):	R	156	-	55d	-	
Changed to Admin. Code Ref. (R no.):	R		-		-	

1.	Agency:	Commerce/Division of Occupational and Professional Licensing		
	Room no.:			
	Building:	Heber M. Wells Building		
	Street address 1:	160 East 300 South		
	Street address 2:			
	City, state, zip:	Salt Lake City UT 84111-2316		
	Mailing address 1:	PO Box 146741		
	Mailing address 2:			
	City, state, zip:	Salt Lake City UT 84114-6741		
	Contact person(s):			
	Name:	Phone:	Fax:	E-mail:
	Kristina Bean	801-530-6621	801-530-6511	kbean@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2.	Title of rule or section (catchline):
	Burglar Alarm Licensing Rule
3.	Type of notice:
	New ____; Amendment XXX; Repeal ____; Repeal and Reenact ____
4.	Purpose of the rule or reason for the change:
	The Division, Alarm System Security and Licensing Board and Construction Services Commission reviewed the rule and determined changes should be made. The purpose of this filing is to: (1) add, modify and renumber definitions in Section R156-55d-102; (2) add direct seller in Section R156-55d-302c; (3) modify the timing of retaking of exams in Section R156-55d-302d; and (4) clarify that unprofessional conduct of an alarm company agent, who is compensated as a direct seller in accordance with 26 U.S.C. Section 3508, may also be unprofessional conduct of the alarm company.
5.	This change is a response to comments from the Administrative Rules Review Committee.
	No XXX; Yes ____
6.	Summary of the rule or change:

	<p>Section 102: New paragraph (1) adds a definition for "alarm company agent" for clarification to include a direct seller in accordance with 26 U.S.C. Section 3508. New paragraph (2) adds a definition for "conviction". Amended paragraph (3) deletes an inapplicable reference to R156-55d-102(1) and adds additional clarifications to the definition of "employee". Section 302c: Paragraph (2) adds direct seller in accordance with 26 U.S.C. Section 3508. Section 302d: Paragraph (3) is rewritten to delete the requirement of burglar alarm company qualifiers to wait six months to retake a failed examination following the third failed attempt. Section 502: Paragraph (2) is added to clarify that unprofessional conduct of an alarm company agent, whether compensated as a W-2 employee or compensated in accordance with 26 U.S.C. Section 3508 as a direct seller, may also be unprofessional conduct of the alarm company.</p>						
7.	<p>Aggregate anticipated cost or savings to:</p> <p>A) State budget:</p> <p>Affected: No ____; Yes XXX</p> <p>The Division will incur minimal costs of approximately \$75.00 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.</p> <p>B) Local government:</p> <p>Affected: No XXX; Yes ____</p> <p>The proposed amendments only apply to licensed burglar alarm companies and burglar alarm company agents and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.</p> <p>C) Small businesses ("small business" means a business employing fewer than 50 persons):</p> <p>Affected: No ____; Yes XXXX</p> <p>The proposed amendments apply only to licensed burglar alarm companies and burglar alarm company agents and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments may decrease the amount of state and federal tax withholdings a burglar alarm company is required to withhold pursuant to 26 U.S.C. Section 3508. However, the Division cannot quantify any potential savings due to a wide range of circumstances.</p> <p>D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</p> <p>Affected: No XXX; Yes ____</p> <p>The proposed amendments apply only to licensed burglar alarm companies and burglar alarm company agents and applicants for licensure in those classifications. The Division does not anticipate these proposed amendments will impact other persons.</p>						
8.	<p>Compliance costs for affected persons:</p> <p>The proposed amendments apply only to licensed burglar alarm companies and burglar alarm company agents and applicants for licensure in those classifications. The proposed amendments may decrease the amount of state and federal tax withholdings a burglar alarm company is required to withhold pursuant to 26 U.S.C. Section 3508, specifically for burglar alarm company agents that qualify as direct sellers as defined by the Internal Revenue Service (IRS). However, the Division cannot quantify any potential savings due to a wide range of circumstances.</p>						
9.	<p>A) Comments by the department head on the fiscal impact the rule may have on businesses:</p> <p>This filing brings the rules into compliance with federal laws that exempt businesses that employ direct sellers from certain federal requirements regarding tax withholding and insurance coverage. Any fiscal impact to such businesses will vary and cannot be quantified.</p> <p>B) Name and title of department head commenting on the fiscal impacts:</p> <p>Francine A. Giani, Executive Director</p>						
10.	<p>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</p> <p>State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :</p> <table border="1"> <tr> <td>Section 58-55-101</td><td>Subsection 58-1-106(1)(a)</td></tr> <tr> <td>Subsection 58-1-202(1)(a)</td><td>Subsection 58-55-302(3)(k)</td></tr> <tr> <td>Subsection 58-55-302(3)(l)</td><td>Subsection 58-55-302(4)</td></tr> </table>	Section 58-55-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Subsection 58-55-302(3)(k)	Subsection 58-55-302(3)(l)	Subsection 58-55-302(4)
Section 58-55-101	Subsection 58-1-106(1)(a)						
Subsection 58-1-202(1)(a)	Subsection 58-55-302(3)(k)						
Subsection 58-55-302(3)(l)	Subsection 58-55-302(4)						
11.	<p>This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i>):</p>						

	First Incorporation	Second Incorporation
Official Title of Materials Incorporated (from title page)		
Publisher		
Date Issued		
Issue, or version		
ISBN Number (optional)		
ISSN Number (optional)		
Cost of Incorporated Reference		
Action: Adds, updates, or removes		
(If this rule incorporates more than two items by reference, please attach additional pages)		
12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):		10/15/2014
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
09/24/2014	9:00 AM	160 East 300 South, Conference Room 474, Salt Lake City, Utah
13. This rule change may become effective on (mm/dd/yyyy):		10/22/2014
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14. Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")); may not include the name of the agency:		
licensing	alarm company	
burglar alarms		
15. Attach an RTF document containing the text of this rule change (filename):		R156-55d.pro
To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.		
AGENCY AUTHORIZATION		
Agency head or designee, and title:	Mark B. Steinagel, Director	Date (mm/dd/yyyy): 08/28/2014

R156. Commerce, Occupational and Professional Licensing.

R156-55d. Burglar Alarm Licensing Rule.

R156-55d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Alarm company agent", as defined in Subsection 58-55-102(2), is further defined for clarification to include a direct seller in accordance with 26 U.S.C. Section 3508.

(2) "Conviction", as used in this rule, means criminal conduct where the filing of a criminal charge has resulted in:

(a) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(b) a pending diversion agreement;

(c) a plea of nolo contendere;

(d) a guilty plea;

(e) a finding of guilt based on evidence presented to a judge or jury; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

([2]3) "Employee", as used in Subsection[s] 58-55-102(17) [~~and R156-55d-102(1)~~], means an individual: [~~providing labor services for compensation who has federal and state taxes withheld and worker's compensation and unemployment insurance provided by the individual's employer.~~]

(a) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person;

(b) whose compensation for federal income tax purposes is reported, or is required to be reported on a W-2 form issued by the controlling person; and

(c) who is entitled to workers compensation and unemployment insurance provided by the individual's employer per state or federal law.

([1]4) "Immediate supervision", as used in this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervision person, so as to ensure that the end result complies with applicable standards.

([3]5) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55d-502.

R156-55d-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3) (k) (i) are established as follows:

(1) ~~[a]~~An applicant shall have within the past ten years:

(a) not less than 6,000 hours of experience in a lawfully operated alarm company business of which not less than 2,000 hours shall have been in a managerial, supervisory, or administrative position; or

(b) not less than 6,000 hours of experience in a lawfully operated alarm company business combined with not less than 2,000 hours of managerial, supervisory, or administrative experience in a lawfully operated construction company[+].

(2) ~~[a]~~All experience under Subsection (1) shall be as an employee or in accordance with 26 U.S.C. Section 3508 as a direct seller, and under the immediate supervision of the applicant's employer;

(3) ~~[a]~~All experience must be obtained while lawfully engaged as an alarm company agent and working for a lawfully operated burglar alarm company[+].

(4) A total of 2,000 hours of work experience constitutes one year (12 months) of work experience[+].

(5) ~~[a]~~An applicant may claim no more than 2,000 hours of work experience in any 12 month period[+and].

(6) ~~[a]~~No credit shall be given for experience obtained illegally.

R156-55d-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3) (k) (i) (C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rule Examination with a score of not less than 75%;

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%; and

(3) an applicant for licensure who fails an examination shall wait 30 days before retaking a ~~[may retake the]~~ failed examination ~~[as follows:~~

~~(a) no sooner than 30 days following any failure, up to three failures; and~~

~~(b) no sooner than six months following any failure thereafter].~~

R156-55d-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

~~[[1]~~a) failing as an alarm company to notify the Division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent as required under Section R156-55d-306;

~~[[2]~~b) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section R156-55d-601;

~~[[3]~~c) failing as an alarm agent to carry or display a copy of his Electronic Security Association (ESA), formerly known as the National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training as required under Section R156-55d-603;

~~[[4]~~d) employing as an alarm company a qualifying agent or alarm company agent knowing that individual has engaged in conduct inconsistent with the duties and responsibilities of an alarm company agent.

~~[[5]~~e) failing to comply with operating standards established by

rule;

(~~[6]~~f) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or a settlement or agreement whereby an individual has entered into participation as a first offender, or an action of deferred adjudication, or other program or arrangement where judgment or conviction is withheld;

(~~[7]~~g) making false, misleading, deceptive, fraudulent, or exaggerated claims by an alarm company agent; and

(~~[8]~~h) an alarm business or company having a residential or commercial false alarm rate 100% above the average of the residential or commercial false alarm rate of the municipality or county jurisdiction in which the alarm business or company's alarm systems are located.

(2) Unprofessional conduct by an alarm company agent, whether compensated as a W-2 employee or compensated in accordance with 26 U.S.C. Section 3508 as a direct seller, may also be unprofessional conduct of the alarm company employing the alarm company agent.

KEY: licensing, alarm company, burglar alarms

Date of Enactment or Last Substantive Amendment: ~~[October 29, 2013]~~ 2014

Notice of Continuation: February 7, 2012

Authorizing, and Implemented or Interpreted Law: 58-55-101; 58-1-106(1)(a); 58-1-202(1)(a); 58-55-302(3)(k); 58-55-302(3)(l); 58-55-302(4); 58-55-308